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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,669	12/14/2001	Gordon N. McGrew	112703-213	2933
29156	7590	09/16/2004	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			CORBIN, ARTHUR L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,669

Applicant(s)

McGraw Et Al

Examiner

ARTHUR L. CORBIN 1761

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 6-14-13-04

☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-12, 14-20, 28-49 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-12, 14-20, 28-49 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 051404
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 20, 38 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of these claims is an improper dependent claim since each depends from a cancelled claim, either directly or indirectly.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-6 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by D'Amelia et al (col. 1-3 and 5).

D'Amelia et al discloses a coated chewing gum center including a zinc or copper metal salt, as claimed by applicant, and a calcium salt (applicant's claim 10).

The gum provides breath freshening benefits.

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6. Claims 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Hill (cols. 10, 12, 13, 15-17 and 20).

Hill discloses a chewing gum having a coating including a therapeutically effective amount of a metal salt and a cooling agent. Hill is further described in paragraph no. 6, Paper No. 020604. The gum in Hill inherently is effective in treating halitosis since it includes each of applicant's claimed components.

7. Claims 2, 3, 7-9, 11-12, 14-20, 28-33 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amelia et al in view of Hill. It would have been obvious to include each of applicant's claimed coating components in the coating of D'Amelia et al in order to obtain the added benefits of plaque disruption and gingivitis control since it is well known to coat chewing gum with such components to obtain these benefits, as evidenced by Hill. With regard to claim 36, it would have been obvious to exclude the zinc salt with its function from Hill's coating since Hill's coating composition only requires one or more of the coating components disclosed therein (col. 15, line 15).

8. Claims 40-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill in view of D'Amelia et al.

Applicant is referred to the reasoning set forth in the second sentence of paragraph No. 8, Paper No. 020604.

9. Applicant's arguments filed July 23, 2004 have been fully considered but they are not persuasive. Most of applicant's arguments are considered moot in view of the new grounds of rejection herein. However, applicant's comment, that Hill teaches that

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release of active components from a gum base is a major problem, is without merit since the portion of Hill relied upon by applicant (col. 8, lines 63-65) is merely background information and not part of Hill's inventive disclosure. Hill also does not teach not to include an active ingredient in the gum center, despite applicant's contention to the contrary.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

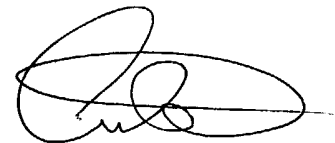
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/af
September 13, 2004



ARTHUR L. CORBIN
PRIMARY EXAMINER

9-15-04